

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications :
 of :
GROLIER, INCORPORATED :
for revision or refund of combined :
franchise taxes for 1960, 1961, :
1962 and 1963 under Article 9-A :
of the tax law. :

Grolier, Incorporated having filed applications for revision or refund of combined franchise taxes for the years 1960, 1961, 1962 and 1963 under Article 9-A of the tax law, and a hearing having been held on June 7, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Donald W. Milroy, Controller, and William O. Lenihan, Vice-President and Attorney, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) For the years 1960 and 1961 permission was granted under the provisions of Section 211.4 of the tax law for the filing of reports on a combined basis, including the taxpayer and its wholly-owned subsidiaries, Grolier Society Inc., Grolier Enterprises Inc., Americana Corporation, Catskill Craftsmen Inc. and Richards Company Inc. For 1962 and 1963 another wholly-owned subsidiary, Spencer International Press Inc., was permitted to be included in the combined reports.

(2) The taxpayer filed consolidated corporation income tax reports with the United States Treasury Department for the years involved, which included other corporations in addition to those in the New York combined reports.

(3) The Corporation Tax Bureau issued notices of assessment, on September 16, 1968, as follows:

	<u>1960</u>	<u>1961</u>
Combined entire net income	\$2,115,178.32	\$3,917,701.44
Business allocation percentage	34.7937	28.1279
Allocated base	735,948.80	1,101,967.14
Tax at 5-1/2%	40,477.18	60,608.19
Plus subsidiary capital tax	206.39	255.95
Total tax	40,683.57	60,864.14
Tax paid	40,000.00	47,057.14
Added tax	\$ 683.57	\$ 13,807.00

For 1962 the Corporation Tax Bureau computed a combined entire net loss of \$4,192,159.87, and for 1963 computed a combined entire net loss of \$2,524,226.36. These losses were allowed as carrybacks to prior years. The actual tax liability for 1962 and 1963 was computed on capital, and the added taxes on such basis are not in dispute.

(4) In computing combined entire net income or combined entire net loss, no elimination was allowed of intercompany profits. The entire net income of each corporation included in the combined reports was computed as if it had filed on a separate basis for Federal purposes.

(5) Timely applications for revision or refund were filed.

(6) Section 208.9 of the tax law reads, in part, as follows:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, or which the taxpayer would have been required to report, if it had not made an election under subchapter s of chapter one of the internal revenue code, except as hereinafter provided, * * *."

(7) For the years involved, Section 211.4 of the tax law reads, in part, as follows:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, * * * may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require * * *. In the case of a combined report the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the report. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated."

(8) Federal Income Tax Regulation 1.1502-31A(b) applicable

to the years involved reads, in part, as follows:

"(b) Computations. In the case of affiliated corporations which make, or are required to make, a consolidated return, and except as otherwise provided in the regulations under section 1502:

"(1) Taxable income. The taxable income of each corporation shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations, except:

"(i) There shall be eliminated unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in the regulations under section 1502 as intercompany transactions); * * *."

The State Tax Commission hereby

DETERMINES:

(A) "Entire net income" as defined in Section 208.9 of the tax law means the net income that a corporation is required to compute in accordance with the Federal provisions covering the determination of taxable income of separate corporations.

(B) Federal Regulation 1.1502-31A(b)(1)(i) eliminating unrealized profits and losses in transactions between members of an affiliated group applies only in those cases where a Federal consolidated return is filed.

(C) There are no provisions in Article 9-A of the tax law that permit an affiliated group of taxpayers to report on a consolidated basis.

(D) Section 211.4 of the tax law only provides for the eliminating of intercorporate dividends in computing combined entire net income.

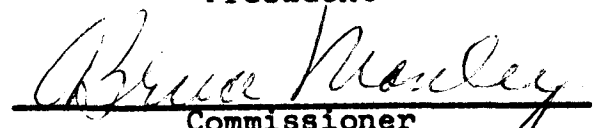
(E) The added taxes as set forth in (3) above are affirmed.

Dated: Albany, New York

this 4th day of April 1973.

STATE TAX COMMISSION


President


Commissioner


Commissioner

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
GROLIER, INCORPORATED :
for redetermination of deficiency :
or for refund of combined fran- :
chise taxes for 1964 and 1965 :
under Article 9-A of the tax law. :

Grolier, Incorporated having filed petition for redetermination of deficiency or for refund of combined franchise taxes for 1964 and 1965 under Article 9-A of the tax law, and a hearing having been held on June 7, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Donald W. Milroy, Controller, and William O. Lenihan, Vice-President and Attorney, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) For the year 1964 permission was granted under the provisions of Section 211.4 of the tax law for the filing of reports on a combined basis including the taxpayer and its wholly-owned subsidiaries, Grolier Society Inc., Grolier Enterprises Inc., Americana Corporation, Catskill Craftsmen Inc., Richards Company Inc., Grolier International Inc., R. H. Hinkley Company and Spencer International Press Inc. For 1965 another wholly-owned subsidiary, Federated Credit Corp., was permitted to be included in the combined report.

(2) The taxpayer filed consolidated corporation income tax reports with the United States Treasury Department for the years involved, which included other corporations in addition to those in the New York combined reports.

(3) The Corporation Tax Bureau issued a credit for 1964 and notice of deficiency for 1965 as follows:

	<u>1964</u>	<u>1965</u>
Combined entire net income	\$2,424,777.32	\$6,279,627.53
Business allocation percentage	23.9606	22.9294
Allocated base	580,991.19	1,439,880.91
Tax at 5-1/2%	31,954.52	71,994.05
Plus subsidiary capital tax	221.02	294.16
Total tax	32,175.54	72,218.21
Tax reported	37,995.52	55,658.81
Tax credit	5,819.98	
Tax deficiency		\$ 16,559.40

(4) In computing combined entire net income no elimination was allowed of intercompany profits. The entire net income of each corporation included in the combined reports was computed as if it had filed on a separate basis for Federal purposes.

(5) Timely petition for redetermination of deficiency or for refund of tax was filed.

(6) The taxpayer is entitled to an additional deduction for charitable contributions aggregating \$239,937.54 for 1965, representing \$130,027.53 on behalf of Grolier Society Inc. and \$109,910.01 on behalf of Americana Corporation. A mathematical error was made in computation of the deficiency for 1965 at (3) above. Tax at 5-1/2% on allocated base of \$1,439,880.91 produces a result of \$79,193.45 instead of \$71,994.05 as shown. Allowance of the additional contributions and correction of the mathematical error results in a revised tax deficiency for 1965 as follows:

Previous combined entire net income	\$6,279,627.53
Less additional charitable contributions	239,937.54
Revised combined entire net income	6,039,689.99
Business allocation percentage	22.9294
Allocated base	1,384,864.68
Tax at 5-1/2%	76,167.56
Plus subsidiary capital tax	294.16
Total tax	76,461.72
Tax reported	55,658.81
Revised tax deficiency	20,802.91

(7) Section 208.9 of the tax law reads, in part, as follows:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, or which the taxpayer would have been required to report, if it had not made an election under subchapter s of chapter one of the internal revenue code, except as hereinafter provided, * * *."

(8) For the years involved, Section 211.4 of the tax law

reads, in part, as follows:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, * * * may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require * * *. In the case of a combined report the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the report. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated."

(9) Federal Income Tax Regulation 1.1502-31A(b) applicable to the years involved reads, in part, as follows:

"(b) Computations. In the case of affiliated corporations which make, or are required to make, a consolidated return, and except as otherwise provided in the regulations under section 1502:

"(1) Taxable income. The taxable income of each corporation shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations, except:

"(i) There shall be eliminated unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in the regulations under section 1502 as intercompany transactions); * * *."

The State Tax Commission hereby

DECIDES:

(A) "Entire net income" as defined in Section 208.9 of the tax law means the net income that a corporation is required to compute in accordance with the Federal provisions covering the determination of taxable income of separate corporations.

(B) Federal Regulation 1.1502-31A(b)(1)(i) eliminating unrealized profits and losses in transactions between members of an affiliated group applies only in those cases where a Federal consolidated return is filed.

(C) There are no provisions in Article 9-A of the tax law that permit an affiliated group of taxpayers to report on a consolidated basis.

(D) Section 211.4 of the tax law only provides for the eliminating of intercorporate dividends in computing combined entire net income.

(E) The tax credit of \$5,819.98 for 1964 and revised tax deficiency of \$20,802.91 for 1965 are affirmed together with interest in accordance with the provisions of Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 4th day of April 1973.

STATE TAX COMMISSION



President



Commissioner



Commissioner